quite unnecessary. When the latter question is squarely raised, it is to be hoped that the English court will renounce its present views and return to those expressed in the Niblett case. *Niblett* v. *Confectioner's Materials Co.*, 125 L. T. R. 552 (C. A.). See 35 HARV. L. REV. 477.

SALES — RIGHTS AND REMEDIES OF SELLER — EFFECT OF NOTICE TO BUYER OF INTENDED RESALE BY UNPAID SELLER. — The plaintiff sold goods to the defendant, retaining a lien for the purchase price. Upon the defendant's default, the plaintiff gave him notice of intention to resell, naming the time, place, and terms of the resale. The defendant made no objection. The plaintiff brought suit for the difference between the resale price and the contract price. In answer, the defendant asserted that the circumstances of the resale made it unreasonable. *Held*, that judgment be entered for the plaintiff for the full amount claimed. *Pride* v. *Marshall*, 131 N. E. 183 (Mass.).

For a discussion of the principles involved, see NOTES, *supra*, p. 870.

SALES — WARRANTIES: REMEDIES FOR BREACH — BUYER'S VOLUNTARY RESCISSION OF SUB-CONTRACT. — The plaintiff sold a horse to the defendant with warranty of age. The defendant resold it without warranty of age. On ascertaining that the horse was older than supposed, the sub-purchaser complained to the defendant, who voluntarily rescinded the sub-contract. In an action brought for the purchase price, the defendant counterclaims for damages in breach of warranty. *Held*, that the counterclaim be dismissed. *Pointer* v. *Robinson*, [1922] 1 W. W. R. 91 (Alta.).

The dismissal of the counterclaim was wrong. The court seems curiously to have confused direct and consequential damages. The defendant counterclaims for damages directly sustained by reason of the failure of the horse to conform to the warranty, and the seller must make good the statements the truth of which he warranted. See WILLISTON, SALES, § 613. The defendant does not claim consequential damage, nor is there any. The existence of the sub-contract and the cause or effect of its rescission are, therefore, immaterial in the present controversy between the original buyer and seller. *Williams* v. *Agius*, [1914] A. C. 510; *Union Selling Co.* v. *Jones*, 128 Fed. 672 (8th Circ.); *Hallam* v. *Bainton*, 60 C. S. C. 325, [1920] 2 W. W. R. 296. The counterclaim should be allowed both at common law and under the Sales Act. See UNIFORM SALES ACT, § 69. See WILLISTON, SALES, §§ 603 *et seq.*

SALVAGE — RECOVERY WHEN REQUESTED SERVICE CONFERS NO BENEFIT. — The steamer D answered the distress call of the steamer M and stood by for two days, making unsuccessful attempts to get a towline aboard. When she had finally succeeded she was dismissed because of the arrival of a vessel sent by the owners of the M to do the towing. The latter ship towed the M to safety. *Held*, that the D was entitled to a salvage award. *The Manchester Brigade*, 276 Fed. 410 (E. D. Va.).

Salvage awards for unsolicited service ordinarily depend on benefit conferred. *The Huntsville*, 12 Fed. Cas. No. 6916 (E. D. S. C.); *The City of Puebla*, 153 Fed. 925 (N. D. Cal.); *The Edward Hawkins*, Lush. Adm. Rep. 515. A requested service stands differently. A request indicates immediate danger, or chance of success not great enough to call forth volunteers. Or again, the request may be the means of communication of the danger; that is, in this last case, possible relief is not in the immediate neighborhood and capable of judging for itself the chances of success, but must be called from a distance. In all these cases in order that salvage will be attempted, and promptly enough, some reward not contingent upon success must be offered. The law recognizes this by permitting a salvage recovery when a requested service has not proved beneficial, if the property is otherwise saved. *The*

Undaunted, Lush. Adm. Rep. 90; *The Melpomene*, L. R. 4 Adm. 129; *The Sabine*, 101 U. S. 384, 390 (*semble*). For ease in administration, whether or not in fact a request indicates one of the three situations above enumerated, is not gone into. Normally it does. In the cases cited the failure to succeed was due to accident, storm, or the like. If due to wilful abandonment salvage is not allowed. *The Algitha*, 17 Fed. 551 (D. Md.). *Cf. The Henry Steers, Jr.*, 110 Fed. 578 (E. D. N. Y.). The case of dismissal, if not for misconduct, seems assimilable to the former rather than to the latter class of cases. The principal case, therefore, is sound. *The Maude*, 3 Asp. Mar. L. Cas. 338. See KENNEDY, CIVIL SALVAGE, 2 ed., 41.

SPECIFIC PERFORMANCE — PARTIAL PERFORMANCE WITH COMPENSATION — REFUSAL OF WIFE TO JOIN IN DEED TO COMMUNITY PROPERTY. — The plaintiff contracted to transfer land worth $15,000 to the defendant, who in return was to assume a mortgage of $6000, and deliver notes to the amount of $4000 and a deed to lots valued at $5000. All the land in question was community property, which by statute the husband cannot convey unless the wife join in the deed. (1919 IDAHO COMP. STAT., c. 184, § 4666.) The plaintiff tendered a deed duly executed by himself and wife. The defendant, whose wife would not join in a deed, refused to accept the conveyance. The trial court ordered that the defendant perform within thirty days, or that judgment for $9000 be entered against him. *Held*, that the judgment be reversed. *Childs* v. *Reed*, 202 Pac. 685 (Ida.).

The decision cannot be supported upon the ground that there is absence of mutuality of remedy. The defendant can be amply protected by a decree which is conditional on the plaintiff's performance. *Logan* v. *Bull*, 78 Ky. 607, 617. *Cf. Mullens* v. *Big Creek, etc. Iron Co.*, 35 S. W. 439, 442 (Tenn. Ch. App.). See 16 HARV. L. REV. 72; 34 HARV. L. REV. 336. But the case may be supported upon another ground. Since the sale was not executed, at law the plaintiff can recover not the value of his land but merely damages for the breach of contract. *Bensinger* v. *Erhardt*, 74 App. Div. 169, 77 N. Y. Supp. 577. See 3 WILLISTON, CONTRACTS, § 1399. *Contra, Gray* v. *Meek*, 199 Ill. 136, 64 N. E. 1020. The trial court must, then, have proceeded on a theory of specific enforcement with compensation. Such relief would subject the defendant to an affirmative liability which was never contemplated; it would be a remaking of the contract on a much more elaborate scale than is done in cases where a vendor is compelled to remit a portion of the purchase price. See *Sternberger* v. *McGovern*, 56 N. Y. 12. See also 25 HARV. L. REV. 731. But see *Mundy* v. *Irwin*, 20 N. Mex. 43, 145 Pac. 1080. Furthermore, the plaintiff, to satisfy the judgment against the husband, might levy execution upon the very land which the wife refused to convey. *Holt* v. *Empey*, 32 Ida. 106, 178 Pac. 703. The policy of the statute which requires her consent to a conveyance of community property would seem to forbid that she be subjected to the strong indirect pressure which a money judgment would involve. *Cf. Riesz's Appeal*, 73 Pa. St. 485.

STATUTES — INTERPRETATION — ENLARGING THE SCOPE OF ONE STATUTE TO CONFORM WITH THE POLICY OF ANOTHER. — A mother sued under a statute for the negligent killing of her illegitimate child. (1911 MD. ANN. CODE, Art. 67, §2.) Another statute gave mutual rights of inheritance to a mother and her illegitimate children. (1911 MD. ANN. CODE, Art. 46, § 30.) The defendant demurred. *Held*, that the demurrer be sustained. *Smith* v. *Hagerstown & Frederick Ry. Co.*, 114 Atl. 729 (Md.).

The word "child," both at common law and as used in death acts, is a word of art meaning "legitimate child." *Dickinson* v. *Northeastern Ry Co.*, 2 H. & C. 735, 9 L. T. R. 299; *McDonald* v. *Pittsburgh, C. C. & St. Louis Ry.*